

**United States Bankruptcy Court
Eastern District of Virginia
Alexandria Division**

In re:

Gaukhar Kabulovna Kussainova,

Case No. 19-12371-BFK

Debtor.

Chapter 11

Hearing: March 23, 2021, at 11:00 am

Motion to Dismiss or Convert Case to Chapter 7

Comes Now, John P. Fitzgerald, III, Acting United States Trustee for Region 4, and moves the Court to dismiss or convert this case to a case under chapter 7, whichever is in the best interests of the creditors and the estate.

In support of this motion the following representations are made:

1. The Court has authority to hear and decide this matter. 28 U.S.C. Section 1334.
2. This is a core matter. 28 U.S.C. Section 157(b)(2)(A).
3. On July 19, 2019, the Debtor filed this case under chapter 11 of the Bankruptcy Code.
Docket No. 1.
4. The Income and Disbursement Recap in the December 2020 monthly financial report shows the Debtor had net income in two months in 2020, January and September.
5. On January 31, 2020, the Debtor sold real estate located at 156 Martin Ln., Alexandria, VA 22304 for \$1,057,500. Report of Sale, Docket No. 75.
6. The Debtor had net income for January was \$988,927.
7. The Debtor's net income for September 2020 was \$684.

Office of United States Trustee
1725 Duke Street, Suite 650
Alexandria, VA 22314
John P. Fitzgerald, III
Acting United States Trustee
For Region 4
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8. The Debtor incurred a loss for all the other months combined of \$55,924.
9. The Debtor has not filed a disclosure statement and plan of reorganization.

Argument

The Court, for cause, after notice and hearing, may dismiss or convert a case to a case under chapter 7, whichever is in the best interests of the creditors and the estate. 11 U.S.C. § 1112(b)(1).

The test for deciding whether to dismiss or convert a chapter 11 case is a finding of objective futility and subjective bad faith. Carolin Corp. v. Miller, 886 F.2d 693, 695 (4th Cir. 1989).

There is no definition of “good faith” in the Bankruptcy Code. This finding is fact-specific. In re Sawyer, No. 07-10252-SSM, 2007 WL 1725627, at *5 (Bankr. E.D. Va. June 13, 2007), opinion corrected, No. 07-10252 SSM, 2007 WL 2110314 (Bankr. E.D. Va. July 17, 2007).

“The objective futility inquiry is designed to insure that there is embodied in the petition some relation to the statutory objective of resuscitating a financially troubled [debtor].” In re Paolini, 312 B.R. 295, 304 (Bankr. E.D. Va. 2004) (citation omitted) (quotation marks omitted).

Chapter 11 cases should not remain on the docket like beached whales. Bankruptcy should not become a way of life. The goal of chapter 11 is to confirm a plan of reorganization.

This is not a complicated case. A disclosure statement and plan of reorganization should have been filed by now.

Cause exists to grant the requested relief:

(A) Unreasonable delay in filing a disclosure statement and plan of reorganization.

The United States Trustee cannot find and specifically identify any unusual circumstances establishing that dismissing or converting this case is not in best interests of the creditors and the estate.

Wherefore, the Acting United States Trustee for Region 4 moves the Court to dismiss or convert this case whichever is in the best interests of the creditors and the estate.

John P. Fitzgerald, III
Acting United States Trustee
For Region 4

/s/ Jack Frankel
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Certificate of Service

I hereby certify that on the 17th day of February, 2021, I mailed, United States mail, first class, postage prepaid, a true copy of this motion and notice of motion and hearing to the Debtor and e-mailed a copy to the Debtor's attorney.

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/s/ Jack Frankel